



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2005

Mr. Reagan E. Greer
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761

Open Records Decision No. 682

Re: When requested public information is available on a governmental body's website, does the governmental body comply with the Public Information Act (the "PIA") by simply referring the requestor to the governmental body's website or does the PIA require the governmental body to make the requested information available in another way? (ORQ-66).

Dear Mr. Greer:

You inform us that, in an effort to increase the speed and accuracy with which open records requests are satisfied while promoting overall government efficiency, the Texas Lottery Commission (the "Commission") is proposing to make certain public information available on its website. You ask whether the Texas Public Information Act (the "PIA"), chapter 552 of the Government Code, allows a governmental body to simply refer a requestor to its website when the requestor seeks either copies or access to public information that is identifiable and readily available on its website.¹ We conclude that, unless the requestor agrees to accept access to the requested information via the website, a governmental body does not comply with the PIA by simply advising the requestor that the requested information is available on its website.

I. Background

The PIA generally makes public the records of a governmental body. See TEX. GOV'T CODE ANN. §§ 552.001 (Vernon 2004) (proclaiming state policy that each person is entitled to "complete information about the affairs of government and the official acts of public officials and employees"), .002 (defining "public information"), .003 (defining

¹Letter from Reagan E. Greer, Executive Director, Texas Lottery Commission, to Katherine Minter Cary, Chief, Open Records Division, Office of the Texas Attorney General (Dec. 15, 2004) (on file with Open Records Division).

“governmental body”). Government information must be available to the public at a minimum during the governmental body’s normal business hours. *Id.* § 552.021.

Although the PIA generally prohibits a governmental body that chooses to make information available to the public on a website from imposing a charge for access to or electronic copies of such information, the PIA provides no procedures for the production of public information on a governmental body’s website. *See id.* § 552.272(a), (b); Tex. Att’y Gen. ORD-668 (2000). However, the PIA encourages governmental bodies to explore options to make information available to the public through electronic access via computer networks or other means.² TEX. GOV’T CODE ANN. § 552.272(d) (Vernon 2004). The PIA also mandates efficient use of supplies and other resources to avoid excessive reproduction costs. *See id.* § 552.268. Furthermore, as you point out, elsewhere in the law the legislature has stated that the policy of this state with regard to the use of information technologies by state agencies is “to provide as soon as possible the most cost-effective and useful retrieval and exchange of information . . . from the agencies and branches of state government to the residents of this state and their elected representatives.” *See id.* § 2054.001(b) (Vernon 2000). The PIA also requires the “prompt” production of requested public information. *See id.* § 552.221(a) (Vernon 2004). However, a governmental body’s response to the legislative call for efficiency and increased Internet access for government information, though laudable, does not, as you suggest, complete the analysis of the PIA in this situation.

II. Duty of Officer for Public Information

The PIA places responsibility for compliance with the PIA on the governmental body’s officer for public information. *See id.* §§ 552.203 (general duties of public information officer), .204 (scope of responsibility of public information officer), .221 (production of public information), .353 (public information officer’s criminal liability for negligent failure or refusal to provide access to or copying of public information). The chief administrative officer of a governmental body is the officer for public information, except that each elected county officer is the officer for public information of the information created or received by that county officer’s office. *Id.* § 552.201. Each department head is the public information officer’s agent for purposes of complying with the PIA. *Id.* § 552.202.

The PIA does not specifically address whether a public information officer’s duty is discharged by simply referring a requestor to information posted on the governmental body’s website. The general duty of each public information officer is to “make public information available for inspection and copying.” *Id.* § 552.203(1). Section 552.221 of the Government Code elaborates on that duty:

²Each state governmental body must report to the Texas Building and Procurement Commission the cost of making information available to the public by means of the Internet or another electronic format. *See id.* § 552.010(a).

(a) An officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer. In this subsection, “promptly” means as soon as possible under the circumstances, that is, within a reasonable time, without delay.

(b) An officer for public information complies with Subsection (a) by:

(1) providing the public information for inspection or duplication in the offices of the governmental body; or

(2) sending copies of the public information by first class United States mail if the person requesting the information requests that copies be provided and pays the postage and any other applicable charges that the requestor has accrued under Subchapter F.

Id. § 552.221(a), (b).

Thus, under subsection (a), the duty of the public information officer is to promptly produce public information so that the requestor may inspect the information, copy the information, or both inspect and copy the information. *See id.* § 552.221(a). Subsection (b) further explains that a public information officer must do one of two things to comply with subsection (a): (1) provide the information for inspection or duplication in the offices of the governmental body; or (2) send copies to the requestor by mail. *See id.* § 552.221(b). The language of section 552.221 does not give the public information officer the discretion to choose whether to comply; upon request for the information, the officer must make the information available as required under section 552.221. *Moore v. Collins*, 897 S.W.2d 496, 501 (Tcx. App.—Houston [1st Dist.] 1995, no writ). In this way, section 552.221 ensures public access to requested public information.

Our analysis of section 552.221 answers the question you pose. Even assuming a particular requestor can access the Internet (an assumption we cannot make), informing him or her that the information is posted on the governmental body’s website does not qualify as inspection or duplication in the offices of the governmental body. Nor does it amount to sending copies by United States mail. Therefore, a public information officer does not comply with section 552.221 of the Government Code by referring a requestor, even a requestor with Internet access, to its website.³ Moreover, for the requestor without Internet access, not only would the website referral run afoul of section 552.221, but access to the

³You do not ask and we do not address whether the PIA permits a governmental body to refer a requestor to its website for access to requested public information in a situation in which the governmental body allows the requestor the use of its computer terminals at its offices.

information could be completely foreclosed if we were to conclude that a governmental body complies with the PIA merely by referring a requestor to its website. Thus, our reading of section 552.221 compels us to conclude that Internet access cannot be the sole method for production of requested public information. This conclusion means that, if a requestor does not wish to receive requested information via the governmental body's website, the public information officer or the officer's agent must provide the requested information in one of the ways required under section 552.221(b). *See id.*

You nevertheless argue that by referring a requestor to information on its website, a governmental body has complied with the PIA by providing a "suitable copy" of the requested information in accordance with section 552.228 of the Government Code. *See id.* § 552.228. This provision comes into play when a requestor seeks a copy of requested public information. The provision reads in part as follows:

(a) It shall be a policy of a governmental body to provide a suitable copy of public information within a reasonable time after the date on which the copy is requested.

(b) If public information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape. A governmental body shall provide a copy in the requested medium if:

(1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium;

(2) the governmental body is not required to purchase any software or hardware to accommodate the request; and

(3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party.

(c) If a governmental body is unable to comply with a request to produce a copy of information in a requested medium for any of the reasons described by this section, the governmental body shall provide a paper copy of the requested information or a copy in another medium that is acceptable to the requestor. . . .

Id.

Thus, if a requestor seeks a copy of public information, the copy provided must be “suitable,” and if the information exists in an electronic or magnetic medium, the requestor is entitled to a copy in either paper or, if the three conditions of subsection (b) are met, an electronic medium. If the three conditions are not met, the requestor is entitled to a paper copy of the requested information or a copy in another medium of the requestor’s choosing.⁴ *See id.*

However, regardless of whether we could find that the mere act of referring a requestor with Internet access to a governmental body’s website amounts to providing a “suitable copy” of requested public information in a particular situation, we have determined that a governmental body that simply refers a requestor to its website does not comply with the requirements of section 552.221 of the Government Code. *See id.* § 552.221. Because the practice does not comport with section 552.221, and because no other PIA provision permits the practice as the exclusive method of producing requested public information, we need not consider the PIA’s other requirements for the production of requested public information.

III. Requestor’s Assent

However, we note that, although the PIA does not require him or her to do so, a requestor may agree to accept information via a governmental body’s website in fulfillment of the request.⁵ But, we believe a requestor can only agree to accept information on a governmental body’s website if the requestor knows the exact address of the information. Your use of the terms “specific” and “identifiable” tend to acknowledge this duty. If a requestor agrees to accept online access to information in fulfillment of the request, the governmental body must still provide the requestor with the exact Internet address, or Uniform Resource Locator (“URL”), where the information is available.

⁴Attorney general opinions interpreting section 552.228 address whether a governmental body must provide requested information in the medium the requestor specifies, *see* Tex. Att’y Gen Op. Nos. DM-41 (1991), DM-30 (1991), and whether a governmental body can require the requestor to accept a substitute for a particular requested record, *see* Tex. Att’y Gen Nos. ORD-633 (1995), ORD-606 (1992). What form of a copy may be “suitable” will vary depending on the nature of the requested information. *See* Tex. Att’y Gen Op. No. DM-41 (1991) at 2.

⁵*See, e.g.*, Tex. Att’y Gen. Nos. ORD-633 at 9 (1995) (determining requestor can agree to accept record substitution), ORD-606 at 3 (1992) (determining requestor can agree to accept new document on which only disclosable information has been consolidated and retyped). Likewise, a governmental body does not fulfill its duty under the PIA by referring a requestor to a redacted record on its website unless the requestor agrees to accept the redacted online version. If the requestor seeks the redacted information, the governmental body must then request an attorney general decision for the information it has withheld from the requestor. *See* TEX. GOV’T CODE ANN. § 552.301 (Vernon 2004) (requiring governmental body to request attorney general decision when it withholds requested information).

We understand that the Commission and other governmental bodies have undertaken costly efforts to make their public information available on their websites in order to increase accessibility to their information while decreasing their response time and the cost to requestors. We applaud those efforts to make government more readily accessible and encourage all governmental bodies to follow your example. We note your concern that our interpretation of the PIA may result in a governmental body having to allow inspection or provide copies of information that is already readily available on its website. Ten years ago, when addressing a similar issue, this office made an observation that is pertinent to this case:

We recognize that inconvenience and added expense may sometimes be the consequences of this interpretation of the [PIA]. We are convinced, however, that in many, if not most, cases the governmental body will be able to avoid these consequences. Requestors ordinarily will have more interest in the substance of the information sought, as opposed to its form, and will therefore be satisfied with the requested information in the form most convenient to the governmental body. Moreover, requestors ordinarily will wish to avoid the added delay that compliance with a “special” request may entail.

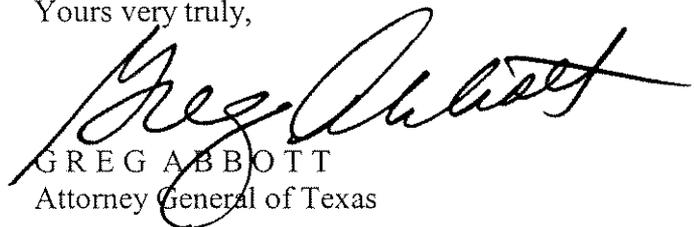
Tex. Att’y Gen. ORD-633 at 3–4 (1995) (footnote omitted).

With the widespread availability of Internet access, we believe that requestors will ordinarily accept the information that is available on a governmental body’s website instead of incurring additional delay and expense to obtain information in a different manner. Furthermore, while our conclusion assures universal access to public information even for requestors who lack Internet access, we hope and expect that requestors do not wish to needlessly burden a governmental body when availing themselves of their right to public information.

S U M M A R Y

A public information officer does not fulfill his or her duty under the Public Information Act by simply referring a requestor to a governmental body's website for requested public information. Section 552.221 of the Government Code requires the governmental body to either provide the information for inspection or duplication in its offices or to send copies of the information by first class United States mail. A requestor may, however, agree to accept information on a governmental body's website in fulfillment of the request and, in that situation, the governmental body must inform the requestor of the Internet address of the requested information.

Yours very truly,



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